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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/824,531	04/02/2001	Earl Hennenhoefcr	0050936-000018	9420
21839 7590 08/21/2007 BUCHANAN, INGERSOLL & ROONEY PC POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404			EXAMINER SALCE, JASON P	
			ART UNIT 2623	PAPER NUMBER
			MAIL DATE 08/21/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 09/824,531	Applicant(s) HENNENHOEFER ET AL.	
	Examiner Jason P. Salce	Art Unit 2623	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 June 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-5 is/are pending in the application.
- 4a) Of the above claim(s) 1 and 6-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/4/2006 has been entered.

### ***Election/Restrictions***

Claims 1 and 6-8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 6/15/2007.

Applicant only argues that the Office's workload would not be reduced and that prosecution would not be simplified. The Applicant has provided no reason as to how a reduced workload and simplified prosecution would not be achieved, however the examiner notes that the claims that have been restricted clearly represent a transmitter in a signal distribution system, while the elected claims represent a receiver. The examiner notes that in the video distribution art, this poses a high burden of search by the examiner and requires prosecution of two separate areas of a video distribution network, therefore placing increased workload and an excessive prosecution process on the examiner.

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Newly submitted claim 9 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claim 9 represents an entire signal distribution with components (traffic sensing device) never introduced in the previous presented claims (elected and non-elected as discussed above). This places an increased workload on the examiner because a new search must be conducted in order to determine patentability of claim 9.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 9 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2, 4 and 5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sutton, Jr. (U.S. Patent No. 5,968,118).

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Referring to claim 2, Sutton, Jr. discloses a wideband signal distribution system (**see Figure 2**) for distributing a plurality of RF modulated signals (**see Column 3, Lines 43-55 for transmitting a plurality of RF modulated signals**) on 569 standard wiring (**see coax wire 56 in Figure 2**).

Sutton Jr. also discloses at least one intelligent device (**see wall mounted information outlet 52 in Figure 2**) for demodulating single frequency carrier RF signals off of said wideband signal distribution system (**see Figure 2 for receiving RF signals from coax cable 56 and Column 3, Lines 13-15 for the information outlet 52 containing the electronic needed for several modulators or demodulators in order to separate the signals output from ports 78, 81-84, 86 and 88**), wherein said single frequency RF signals comprise digital IP information (**see Column 3, Lines 53-55 for receiving and outputting data signals from a computer or terminal device 74 or server 20, wherein a computer inherently receives IP encapsulated information otherwise the data would not know the address of the computer configured to receive the addressed data**), said at least one intelligent device including an RF splitter suitable for splitting said modulated frequency RF signal into an IP digital signal portion containing said IP information (**again note Figure 2 for the information outlet 52 accepting a plurality of modulated frequency RF signals from coax cable 56 and separating (splitting) computer data signals at port 84 from the RF signals**) and a non-IP RF modulated signal (**see Figure 2 for information outlet 52 separating (splitting) the RF modulated signals into a non-IP RF modulated signal at television output port 78**), and a demodulator

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electrically connected to an output of said RF splitter for demodulating the IP digital signal portion split by said RF splitter (**see Column 3, Lines 13-15 for the information outlet 52 containing the electronic needed for several modulators or demodulators in order to separate the signals output from ports 78, 81-84, 86 and 88).**

Referring to claim 4, Sutton, Jr. discloses that said at least one intelligent device uses an existing media control access layer of the network in order to control the sharing of media channels among multiple addressable devices in the system (**the examiner notes that since Sutton, Jr. uses the existing media control access layer in the form of the pre-existing coaxial cable 56 in addition to combining multiple signals (from headend 62, telephone headend 22 and server 20) and transmitting these signals over the pre-existing coaxial cable 56 that this clearly represents using an existing media control access layer to distribute the plurality of incoming video, data or telephony signals to the multiple addressed devices (computer has a network address as well as a telephone)).**

Referring to claim 5, see the rejection of claims 2 and 4.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sutton, Jr. (U.S. Patent No. 5,968,118) in view of Grau et al. (U.S. Patent No. 5,862,451).

Referring to claim 3, Sutton, Jr. discloses all of the limitations in claim 2 as well as at least one addressable device having at least one input and at least one output (**note either computer 74 or telephone 72 in Figure 2**), but fails to teach a COS identification processor for determining a quality of service needed for said IP digital signal portion.

Grau teaches a COS identification processor for determining a quality of service needed for said IP digital signal portion (**see Column 15, Line 31 through Column 16, Line 20 for teaching a CCU used to determine a quality of service from a channel request and selecting a channel for assignment**).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the IP data distribution system, as taught by Sutton, Jr., to include the quality of service determination functionality, as taught by Grau, for the purpose of minimizing disruptions in the transmission of data wherein minimum requirements for certain services can be guaranteed.

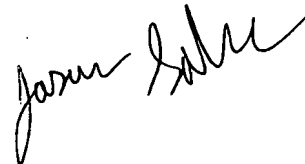
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P. Salce whose telephone number is (571) 272-7301. The examiner can normally be reached on M-F 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason P Salce  
Primary Examiner  
Art Unit 2623



August 14, 2007